

# Exhibit 3

Exhibit 3



IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR STOREY COUNTY

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HERMAN MENEZES, LLC, a Nevada Limited  
Liability Company

CASE NO: 21 OC 00001 - 1E

Plaintiff,  
vs.

DEPT NO: 1

BRESCIANI HAY COMPANY, INC., a Nevada  
Corporation, and ALVIN A. BRESCIANI, an  
Individual, and JUNGO RANCHES, LLLP, an  
Idaho Limited Liability Limited Partnership, and  
DOE individuals 1-10 inclusive, and ROE  
corporations 1-10, inclusive,

Defendants.

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**ORDER STRIKING ANSWER AND GRANTING DEFAULT JUDGMENT**  
**AGAINST BRESCIANI DEFENDANTS ON LIABILITY FOR FAILURE TO**  
**COMPLY WITH COURT ORDERS**

This matter involves disputes involving the purchase and sale of hay between Plaintiff  
HERMAN MENEZES, LLC, a Nevada Limited Liability Company and BRESCIANI HAY

1 COMPANY, INC., a Nevada Corporation, and ALVIN A. BRESCIANI, an Individual  
2 (collectively "Bresciani")

3 The Plaintiff has asserted the following claims against Mr. Bresciani and his company:  
4 breach of contract, unjust enrichment, fraud, breach of the implied covenant of good faith  
5 and fair dealing, a claim for passing a bad check, for conversion, and for exemplary damages.

6 The Plaintiff alleges the following facts in the January 4, 2021 Complaint:

7 On August 5, 2020, Bresciani issued a check to the Plaintiff for the amount of  
8 \$67,160 as a deposit to cover the purchase of hay owned by the Plaintiff.

9 On August 5, 2020, the Plaintiff received notice from Bank of America that  
10 Bresciani's check for \$67,160 was returned due to insufficient funds.

11 On August 7, 2020, the Plaintiff sent Bresciani a letter via certified mail return receipt  
12 requested informing Bresciani that the check for \$67,160 was returned for insufficient  
13 funds. Bresciani did not respond to the Plaintiff's letter nor tender payment to the Plaintiff  
14 to cover Bresciani's check for \$67,160.

15 Around the time the check discussed above was issued, Bresciani removed  
16 approximately \$50,793 in hay (441,680 pounds) from Taylor Farms, which Bresciani  
17 obtained based on the bad check.

18 The Plaintiff also alleges that Bresciani also failed to deliver approximately \$127,000  
19 worth of hay from Jungo Ranches that was owed to the Plaintiff under a separate  
20 agreement.

21 The facts asserted as alleged in the Plaintiff's Complaint are supported by the  
22 Verification of Mark Menezes, an officer of the Plaintiff, which is attached to the Complaint.

1 On March 3, 2021, Bresciani filed an Answer to the Complaint denying the Plaintiff's  
2 claims, generally.

3 On August 4, 2021, the Court issued an order as a result of a motion to compel filed by  
4 the Plaintiff. The August 4, 2021 order directed Bresciani to provide initial NRCP 16.1  
5 disclosures by August 16, 2021, and sanctioned Bresciani \$1,000 in attorney's fees payable to  
6 counsel for the Plaintiff within 10 days of the date of service of the order.

7 On August 25, 2021, this Court entered an order directing Bresciani to appear and show  
8 cause why he should not be sanctioned and/or held in contempt of court for failure to comply  
9 with the August 4, 2021 order.

10 On September 27, 2021 the Court entered another order again compelling and ordering  
11 Bresciani to provide complete NRCP 16.1 initial disclosures by October 24, 2021. The  
12 September 27, 2021 Order also directed Bresciani to pay \$100 per month towards the \$1,000  
13 sanction of attorney's fees payable to counsel for the Plaintiff. The September 27, 2921 order  
14 also expressly stated that failure of Bresciani to strictly comply with the terms of the order may  
15 be treated as a contempt against this Court and will result in entry of default against Bresciani  
16 under NRCP 37.

17 On November 22, 2021, this Court issued another order directing Bresciani to show  
18 cause why he should not be sanctioned or held in contempt for failure to comply with the  
19 Court's August 4, 2021 and September 27, 2021 orders. In the November 22, 2021 order,  
20 the Court directed Bresciani to appear on December 17, 2021. On December 3, 2021, the  
21 Plaintiff filed a Notice of Return of Certified Mail Receipt for Notice of Entry of Order to  
22 Show Cause, showing that the Court's November 22, 2021 order was served on Bresciani's  
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1      counsel on November 26, 2021. Yet, neither Bresciani nor his counsel appeared at the  
2      December 17, 2021 hearing.

3      **Analysis**

4      The record before the Court indicates that Bresciani has repeatedly failed to comply  
5      with the Court's orders by paying the sanction or by making complete NRCP 16.1  
6      disclosures, despite the multiple orders from the Court directing him to do so over a period  
7      spanning several months. Further, Bresciani failed to obey this Court's November 22, 2021  
8      order to appear and show cause on December 17, 2021 why he should not be held in  
9      contempt or further sanctioned.

10     NRCP 37(b)(1) provides that if a party refuses to obey a discovery order the Court  
11    may issue further just orders, including and order striking pleadings under subsection (C)  
12    and rendering default judgment under subsection (F). Bresciani and his counsel have no  
13    reasonable grounds to refuse or fail to comply with the Court's August 4, 2021 order,  
14    September 27, 2021 order, or November 22, 2021 order. Courts have inherent powers to  
15    dismiss actions or enter default judgments for abusive litigation practices. *Young v. Johnny*  
16    *Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

17     In assessing the appropriate degree of sanction, factors can include the degree of  
18    willfulness, the extent to which the non-offending party would be prejudiced by a lesser  
19    sanction, the severity of the sanction relative to the severity of the abuse, whether any  
20    evidence has been irreparably lost, the fairness of alternative sanctions, the policy favoring  
21    adjudication on the merits, whether sanctions unfairly operate to penalize a party for the  
22    misconduct of his attorney. *Young v. Johnny Ribeiro Bldg., Inc.*, at 93. These factors all weigh in  
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1 favor of case terminating sanctions against Bresciani because of the willful nature of the  
2 non-compliance of Bresciani. “[S]anctions may only be imposed where there has been  
3 willful noncompliance with a court order or where the adversary process has been halted by  
4 the actions of the unresponsive party.” *GNLV Corp. v. Seru Control Corp.*, 111 Nev. 866, 869,  
5 900 P.2d 323, 325 (1995). While case-terminating sanctions are a “last resort, appropriate  
6 only when no lesser sanction will do,” in this case the lesser sanctions already imposed by  
7 this Court have not resulted in compliance by Bresciani. *MDB Trucking, LLC v. Versa Prods.*  
8 *Co.*, 475 P.3d 397, 400 (Nev. 2020).

9  
10 Bresciani has demonstrated repeated and willful noncompliance with the  
11 requirements of NRCP 16.1 and the Court’s Orders, and the adversary process has been  
12 completely halted by the actions of Bresciani. In light of the failure of Bresciani to provide  
13 complete NRCP 16.1 disclosures, to pay the sanction as directed by the Court, or even to  
14 appear before the Court when directed to do so, the more serious sanctions available under  
15 NRCP 37(b)(C) and (F) are justified and will be imposed by the Court, including striking  
16 Bresciani’s answer and rendering default judgment against Bresciani.  
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BASED ON THE FOREGOING, the March 3, 2021 Answer filed by Defendants BRESCIANI HAY COMPANY, INC., a Nevada Corporation, and ALVIN A. BRESCIANI, an Individual, is **STRICKEN** and **DEFAULT JUDGMENT** on liability is entered in favor of HERMAN MENEZES, LLC.

The Plaintiff shall file a motion substantiating the damages claimed in this matter within 10 days of issuance of this Order, to which Defendant may respond in accordance with FJDCR 3.8.

## **IT IS SO ORDERED**

Dated this 23 of December, 2021:

**DISTRICT COURT JUDGE**

**Submitted By:**

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*Attorney for the Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on December 22nd, 2021, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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